

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

DERRICK L. JOHNSON,

Petitioner, : Case No. 3:15-cv-090

- vs -

District Judge Walter Herbert Rice
Magistrate Judge Michael R. Merz

JEFFREY LISATH, Warden,
Pickaway Correctional Institution,

:
Respondent.

ORDER STAYING CASE PENDING EXHAUSTION

This habeas corpus case is before the Court on Petitioner's Motion for Stay Pending Exhaustion (Doc. No. 8). The Motion shows Johnson has presented his Seventh Ground for Relief to the Montgomery County Court of Common Pleas unsuccessfully, but the claim is pending before the Second District Court of Appeals.

The Magistrate Judge has already filed a Report and Recommendations in the case, recommending that it be dismissed as barred by the statute of limitations (Doc. No. 6). Staying this case pending the outcome of state court proceedings does not prejudice the State of Ohio which has not been ordered to answer the Petition and whose judgment against Petitioner is still being executed. Granting a stay does not run counter to the policy of *Rhines v. Weber*, 544 U.S. 269, 277-278 (2005), because Petitioner has presented his claims to the state courts first.

In the absence of exceptional or unusual circumstances, principles of comity and federalism require that unexhausted claims be decided in the first instance by the state courts

even if the State does not raise the defense. *O'Guinn v. Dutton*, 88 F.3d 1409 (6th Cir. 1996)(per curiam)(en banc).

Accordingly, the Motion to Stay is GRANTED and the Report and Recommendations are WITHDRAWN. Petitioner is ordered to keep this Court currently advised of any decision by the Second District Court of Appeals. This Court will conduct a new initial review of the Petition after the Second District (or the Supreme Court of Ohio if it accepts jurisdiction) has decided the case.

The Clerk shall furnish a copy of this Order to Petitioner's state court counsel, Charles Slicer III.

The Court notes that Petitioner mailed his Motion to Stay to the Joseph P. Kinneary Courthouse in Columbus. Future filings must be mailed to the Clerk at Room 702, 200 West Second Street, Dayton, Ohio 45402.

March 17, 2015.

s/ *Michael R. Merz*
United States Magistrate Judge